



## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2020-0617; FRL-10018-36]

### **Agency Information Collection Activities; Proposed Renewal of an Existing Collection and Request for Comment; Collection of Information for TSCA Mercury Inventory Reporting.**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICR, entitled: “Collection of Information for TSCA Mercury Inventory Reporting” and identified by EPA ICR No. 2567.03 and OMB Control No. 2070-0207, represents the renewal of an existing ICR that is scheduled to expire on October 31, 2021. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

**DATES:** Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2020-0617, using the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* Thomas Groeneveld (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 566-1188; email address: *groenveld.thomas@epa.gov*.

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: *TSCA-Hotline@epa.gov*.

## **SUPPLEMENTARY INFORMATION:**

### **I. What Information is EPA Particularly Interested in?**

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

### **II. What Information Collection Activity or ICR Does this Action Apply to?**

*Title:* Collection of Information for TSCA Mercury Inventory Reporting.

*ICR number:* EPA ICR No. 2567.03.

*OMB control number:* OMB Control No. 2070-0207.

*ICR status:* This ICR is currently scheduled to expire on October 31, 2021. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the *Federal Register* when approved, are listed in 40 CFR part 9, are displayed either by publication in the *Federal Register* or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* As directed in the June 2016 Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act amendments to the Toxic Substances Control Act (TSCA), EPA is required to assist in the preparation and publication in the *Federal Register* of an “inventory of mercury supply, use, and trade in the United States.” 15 U.S.C. 2607(b)(10)(B) and (D). Based on the inventory of information collected through this ICR, the Agency is directed to “identify any manufacturing processes or products that intentionally add mercury” and “recommend actions, including proposed revisions of Federal law or regulations, to achieve further reductions in mercury use.” 15 U.S.C. 2607(b)(10)(C).

The primary purpose of this ICR is to support the development of that inventory. In turn, the inventory will help the Agency identify uses of mercury and recommend means to achieve further reductions of such uses in commerce. In addition, the Agency seeks to obtain the information necessary to achieve its goal to further reduce the use of mercury in products and certain manufacturing processes in order to prevent future releases to the environment, as well as assist the United States in reporting implementation under the Minamata Convention. EPA seeks to enhance its current information on how much mercury is used, in which products and manufacturing processes, and whether certain products are manufactured domestically, imported, or exported.

Reporting is required from any person who manufactures (including imports) mercury or mercury-added products, as well as any person who otherwise intentionally uses mercury in a manufacturing process under TSCA section 8(b). 15 U.S.C. 2607(b)(10)(D)(i). The Agency promulgated reporting requirements at 40 CFR part 713. In order to avoid duplication, EPA coordinated the reporting with the Interstate Mercury Education and Reduction Clearinghouse (IMERC). 15 U.S.C. 2607(b)(10)(D)(ii).

Regulated entities may claim some of the information given to EPA as CBI. Reporting requirements will contain information for respondents on how to make a claim to EPA that all or part of their submitted information is CBI. EPA handles claims of confidentiality pursuant to established CBI procedures, as found at section 14 of TSCA, 40 CFR Part 2, and the Agency's TSCA CBI Manual. CBI is also protected under the Freedom of Information Act (5 U.S.C 525).

*Burden statement:* annual public reporting and recordkeeping burden for this collection of information is estimated to average 23 hours per response. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

*Respondents/Affected Entities:* Entities potentially affected by this ICR are persons who manufacture (including import) mercury, mercury-added products, and persons who otherwise intentionally use mercury in a manufacturing process.

*Estimated average number of potential respondents per year:* 756.

*Frequency of response:* Every three years.

*Estimated yearly average number of responses for each respondent:* 0.33.

*Estimated total annual burden hours:* 52,000 hours.

*Estimated total annual costs:* EPA estimates the annual average industry burden and cost over three years at approximately 17,000 hours and \$1.4 million dollars, respectively, with a total

industry burden of approximately 52,000 hours and \$4.2 million over the three-year period. Annual average agency burden and costs annualized over 3 years are 1,600 hours and \$0.15 million, with a total agency burden of approximately 4,800 hours and \$0.4 million over 3 years. Total annual burden and cost for both industry and agency annualized over 3 years is 19,000 hours and \$1.8 million dollars. Total overall burden and costs are 57,000 hours and \$4.6 million.

### **III. Are There Changes in the Estimates from the Last Approval?**

In June 2018, EPA finalized a rule to require reporting from persons who manufacture (including import) mercury or mercury-added products, or otherwise intentionally use mercury in a manufacturing process. That rule was challenged in the Second Circuit Court of Appeals by the Natural Resources Defense Council and several state attorneys general in July 2018. The petitioners argued that three exemptions to the reporting requirements violated the statutory mandate within TSCA section 8(b)(10). Oral arguments were held on November 20, 2019 and the court issued its decision in June 5, 2020. The Agency prevailed on two issues, but the Second Circuit vacated an exemption (40 CFR 713.7(b)(2)) for persons who import pre-assembled products that contain a mercury-added component. As a result, such persons are now required to report pursuant to 40 CFR 713.7(b). Additionally, an interim final rule will be used to effectuate the decision of the court, including necessary regulatory amendments.

Based on the numbers of reporters of mercury data to the IMERC Database, as well as EPA's TRI program and CDR rule, there will be a change in manufacturers (including importers) or processors that could respond to this information collection. The annual public burden for this collection of information is estimated about 23 hours per respondent. This request represents a decrease of 9 hours per respondent from that currently in the OMB inventory, or a total decrease of 20,522 hours (from 72,567 to 52,045 hours). This increase is due to, a decrease in rule familiarization burden, a decrease in form completion burden due to mercury export prohibitions, and changes in the number of estimated respondents.

In addition, OMB has requested that EPA move towards using the 18-question format for

ICR Supporting Statements used by other federal agencies and departments and is based on the submission instructions established by OMB in 1995, replacing the alternate format developed by EPA and OMB prior to 1995. EPA intends to update this Supporting Statement during the comment period to reflect the 18-question format, and has included the questions in an attachment to this Supporting Statement. In doing so, the Agency does not expect the change in format to result in substantive changes to the information collection activities or related estimated burden and costs.

#### **IV. What is the Next Step in the Process for this ICR?**

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another *Federal Register* document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

**Authority:** 44 U.S.C. 3501 *et seq.*

Dated: March 17, 2021.

**Michal Freedhoff,**

*Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

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